

Internal Revenue Service

Number: **200647027**

Release Date: 11/24/2006

Index Numbers: 1362.01-03, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-164298-05

Date:

August 15, 2006

Legend:

LLC =

Members =

State =

Date 1 =

Dear :

This letter responds to a letter dated December 9, 2005, and subsequent correspondence written on behalf of LLC, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for LLC to elect to be treated as an association taxable as a corporation for federal tax purposes, and relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code.

The information submitted provides that LLC is a State limited liability company formed on Date 1. The members of LLC intended that LLC be an S corporation for federal tax purposes effective Date 1. However, neither Form 8832, Entity Classification Election, nor Form 2553, Election by a Small Business Corporation, was filed timely for LLC.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an “eligible entity”) can elect its classification for federal tax purposes. An eligible entity with at least two members can elect either to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership.

Section 301.7701-3(b)(1) provides that unless an entity elects otherwise, a domestic eligible entity is as a partnership if it has two or more members.

Section 301.7701-3(c)(1)(i) provides that to elect to be classified other than as provided in § 301.7701-3(b), an eligible entity must file Form 8832 with the designated service center. Section 301.7701-3(c)(1)(iii) provides that an election will be effective on the date specified on the Form 8832 or on the date filed if no such date is specified. The effective date specified on Form 8832 cannot be more than 75 days prior to the date the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election,” as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or an announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. Generally, if an election to be treated as an S corporation is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation beginning in the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year following the year the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, LLC is granted an extension of time of 60 days from the date of this letter to file a completed Form 8832 with the appropriate service center electing under § 301.7701-3(c) to be classified as an association taxable as a corporation for federal tax purposes effective Date 1. A copy of this letter should be attached to the Form 8832.

Additionally, we conclude that LLC has established reasonable cause for failing to make a timely election to be an S corporation for its taxable year that began on Date 1 and that LLC is eligible for relief under § 1362(b)(5). Accordingly, provided that LLC makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 1, within 60 days following the date of this letter, then such election will be treated as timely made for LLC effective Date 1. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether LLC was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to LLC's authorized representative.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: